

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
AVIATION SUBCOMMITTEE**

**U.S.-E.U. OPEN SKIES AGREEMENT: WITH FOCUS ON DOT
NPRM REGARDING “ACTUAL CONTROL” OF U.S. CARRIERS**

FEBRUARY 8, 2006

**TESTIMONY OF
MARK B. DUNKERLEY**

Mr. Chairman, my name is Mark Dunkerley. I am President and Chief Executive Officer of Hawaiian Airlines, Inc. and Chief Executive Officer of Hawaiian Holdings, Inc., the parent holding company of Hawaiian Airlines. It is a great pleasure for me to appear before this Committee today to present testimony concerning foreign ownership and control of United States airlines.

Hawaiian Airlines is the longest serving and largest airline of Hawaii. The hard work and dedication of our employees has given us the moniker of the best airline in the US with the industry's best punctuality, best baggage service and lowest rate of flight cancellations in 2005. Founded seventy six years ago, Hawaiian has enjoyed a significant number of 'firsts' including the first cargo certificate and the first all female crew. More recently, we believe we are the first airline to have emerged from Chapter 11 having paid back its creditors in full and having met its pension obligations to its employees.

I am here today to make two points concerning the US government's application of the restriction on foreign investment in US airlines from the experience our company has had over the course of the last year. First, the larger the pool of capital that is

attracted to an airline, the more our employees, customers, creditors and communities we serve stand to benefit. Second, regulatory uncertainty is a serious deterrent to investors. While neither conclusion amounts to a revelation, the application of existing law on foreign ownership in US airlines has, in our view, limited the pool of available capital to fund US airlines and has made the prospect of investing in US airlines less attractive. Though we believe that the current restrictions on foreign ownership should be changed, we also support DOT's position that clarifying the limits under current law and broadening their interpretation is good public policy.

Hawaiian has first-hand experience regarding the application of the restrictions on foreign ownership. Emerging from bankruptcy is often an obstacle course and in our case there were few obstacles as high or as slippery as persuading DOT that Hawaiian Airlines was owned and controlled by US citizens. A common-sense review of our circumstance would have confirmed our US citizenship in minutes, but the process we were obliged to follow took over five months, was fraught with uncertainty and was excessively costly.

The investors who bought Hawaiian Holdings, the parent of Hawaiian Airlines, were a group of hedge funds all based in the United States, managed by US citizens and having no appreciable concentration of foreign funds. However, because the source of some of the capital being invested in Hawaiian was of foreign origin we faced a daunting regulatory review. Explaining to these sophisticated and worldly US investors that having an insignificant portion of their managed funds contributed by non-US citizens could lead to the revocation of Hawaiian's operating certificate was an event not to be missed. They were incredulous and flabbergasted, having not previously encountered a

regulatory scheme so disconnected with the nature of today's financial world nor one so seemingly capricious.

To its great credit, DOT took the opportunity presented by Hawaiian's case to both fulfill its oversight responsibilities and to provide clearer guidance to others who may follow in our footsteps. The terms of Hawaiian's agreement with DOT were issued as new guidance to carriers in a letter dated March 7, 2005 and are referenced in the NPRM.

But it was a long, expensive, cumbersome and painful process poorly suited to encourage investment in our airline. We were required to submit to the DOT not only the financing and organizational documents associated with the airline and the group which directly controlled the company, but also the financing and organizational documents of each entity that made up the group which purchased our Holding company. This voluminous and we would suggest, largely irrelevant information, was reviewed microscopically by the DOT in attempt to determine if there were indicia of control which could somehow filter through to Hawaiian Airlines. Had there been, and if that control was in the hands of a foreign entity, the DOT would have found that the airline, despite it being within 100% control of a U.S. Board of Directors and U.S. officers, violated the restriction on foreign ownership in US airlines. Our operating certificate would have been revoked and the company liquidated.

In the end, in order to conclude that the US-based and US-managed hedge funds which invested in Hawaiian Holdings were not foreign agents, they had to agree to create a new U.S. entity controlled by the same people that controlled the original funds -- the US managers. The hedge funds received non-voting stock in the new entity while the

U.S. managers held all of the voting stock. This structure satisfied the statutory requirements because the foreign interests were clearly passive -- none of the new investors demonstrated any incentive or ability to exercise any control of the airline. It is fair to say that the hedge funds involved were flummoxed as to why they had to arrange this complex structure to achieve what they had always intended -- namely to make a plain vanilla investment in a publicly held company. The structure is no great thing of beauty but at least now forewarned by our precedent and the proposed NPRM, future hedge funds interested in making an investment in Hawaiian or any other US airline enjoy a measure of clarity as to what they are getting themselves into.

Having been through the mill, we support any effort to streamline and de-mystify citizenship reviews. The NPRM issued by the Department of Transportation which is presently pending, is a good first step and should consequently be supported.

It has been my pleasure to appear today and I would be glad to answer any questions you may have.